

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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ALBERT T. BEANE, JR., individually and on
behalf of all others similarly situated,

Plaintiff,

v.

07-CV-0944 (RMB)

THE BANK OF NEW YORK MELLON,
BNY CONVERGEX EXECUTION
SOLUTIONS LLC and CALLAN
ASSOCIATES, INC.,

Defendants.

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**DECLARATION OF GREGORY Y. PORTER IN
SUPPORT OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

Gregory Y. Porter states under oath:

1. I am a partner in the law firm of McTigue & Porter, LLP and one of the attorneys for plaintiff Albert T. Beane, Jr., in this action. I make this declaration based on my personal knowledge and in support of plaintiff's motion for class certification.

2. McTigue & Porter has extensive experience representing plaintiffs in class action litigation. The firm, located in Washington, D.C., was founded in 1997 to represent pension plan participants. A copy of the firm's resume is attached as Exhibit A to this declaration.

3. McTigue & Porter has handled many complex ERISA class actions over the years, focusing on cases alleging fiduciary breaches with respect to pension plans sponsored by S&P 500 companies. McTigue & Porter attorneys have been named as lead counsel or co-lead counsel in several ERISA class actions, where they have represented classes consisting of more than 70,000 pension plan participants. These cases include *Koch v. Dwyer*, No. 98-5519 (S.D.N.Y.); *Presley v. CHH*, No. 97-04316 (N.D. Cal.); *Blyler v. Agee*, No. 97-0332 (D. Idaho);

In re CMS Energy ERISA Litigation, 225 F.R.D. 539 (E.D. Mich. 2004); *Ambler v. Computer Associates International, Inc.*, CV 02-6281 (E.D.N.Y); and *Sherrill v. Federal-Mogul Corp. Retirement Programs Committee*, 04-72949 (E.D. Mich.). The firm also serves on the plaintiffs' steering committee in *In Re Xerox ERISA Litigation*, No. 02-CV-1138 (D. Conn.). Firm settlements on behalf of pension plans in these cases have totaled more than \$119 million.

4. J. Brian McTigue, the firm's founder, was previously counsel to committees of the U.S. House of Representatives and the U.S. Senate. His legislative work involved investigation and legislation pertaining to ERISA and pension fund investment. As a Senate Legal Counsel for Special Projects, Mr. McTigue was responsible for initiating the first legislative proposal, in 1996, to reduce the percentage of company stock permitted in the portfolios of 401(k) and similar defined contribution pension plans. The bill was the first congressional recognition of a problem with the use of company stock in employer-sponsored defined contribution plans, and several principles in the bill were later enacted into law.

5. Gregory Y. Porter is a partner at McTigue & Porter. Since joining the firm, Mr. Porter has worked on all of the firm's matters, including *In re CMS Energy ERISA Litigation*, 225 F.R.D. 539 (E.D. Mich. 2004); *Ambler v. Computer Associates International, Inc.*, CV 02-6281 (E.D.N.Y); and *Sherrill v. Federal-Mogul Corp. Retirement Programs Committee*, 04-72949 (E.D. Mich.). Mr. Porter has also researched and investigated ERISA cases now filed against various Fortune 500 companies, including Bank of America, Citigroup, and Wells Fargo. Prior to joining the firm in December 2004, Mr. Porter worked for six years at O'Melveny & Myers LLP. Mr. Porter's practice at O'Melveny consisted primarily of representing Fortune 500 companies in complex employee benefits class actions under ERISA and in other complex class actions. He has represented defendants in several cases alleging that the pension plan fiduciaries

breached their duties of loyalty and prudence to the plan with respect to the plan's investments in employer stock, including: *Koch v. Dwyer*, No. 98-CV-5519 (RPP) (S.D.N.Y.); *Tittle v. Enron*, No. 01-CV-3913 (MH) (S.D. Tex.); *Rankin v. Rots*, No. 02-CV-71045 (AC) (E.D. Mich.); *Blyler v. Agee*, No. CV97-0332-(BLW) (D. Idaho). In addition, Mr. Porter was one of the attorneys who defended what appears to be the only ERISA case involving allegations of excessive fees that was tried to judgment. *See Dupree v. Prudential*, (S.D. Fla. No. 9:99-CV-8337-AJ). He serves on the Employee Benefits Committee of the American Bar Association's Labor and Employment Law Section, regularly attends its meetings, has contributed to the annual supplement to its treatise *EMPLOYEE BENEFITS LAW* and has participated in panel presentations at the annual meeting.

6. McTigue & Porter has devoted significant effort to identifying and investigating the potential claims in this action. We have propounded discovery on each defendant and responded to defendants' discovery requests. We have also reviewed over fifty thousand pages produced by defendants in this action.

7. McTigue & Porter interviewed Mr. Beane before filing the complaint and in preparing his responses to defendants' discovery requests.

8. McTigue & Porter is thus familiar with applicable law and has researched the pertinent facts, conducted extensive document discovery, and served interrogatories and requests for admission on defendants. McTigue & Porter has researched and drafted a complaint and an amended complaint. McTigue & Porter has the resources to litigate this case on behalf of a class of plaintiffs, as it has done previously in other cases where it has served as lead counsel or co-lead counsel.

9. Throughout this case, McTigue & Porter has worked with the David M. Preminger of Rosen Preminger & Bloom LLP, which firm is located at 708 Third Avenue, Suite 1600, New York, New York 10017 within this District. As Mr. Preminger's attached resume reflects, Mr. Preminger has been litigating employee benefits cases for over twenty years, including many cases in which he served as lead or co-lead counsel. A copy of Mr. Preminger's resume is attached as Exhibit B to this declaration.

10. Mr. Beane asks that Mr. Preminger and his firm be designated as liaison counsel in conjunction with McTigue & Porter serving as lead counsel for a plaintiff class in this case.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed at Washington, D.C. this 9th day of May, 2008.

\S\Gregory Y. Porter
Gregory Y. Porter

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DECLARATION OF GREGORY Y. PORTER IN SUPPORT OF PLAINTIFF'S MOTION TO CERTIFY CLASS OF ERISA PLANS** was filed electronically with the Court and served this same day via the Court's ECF notification system upon the following:

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May 9, 2008



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